

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508
December 7, 2011

The Honorable Ron Wyden
223 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Wyden:

Thank you for your letter regarding the Anti-Counterfeiting Trade Agreement (ACTA). The President has asked me to reply on his behalf.

The ACTA represents a crucial advance in the international fight against counterfeiting and piracy. The Agreement will support and promote American jobs in our innovative and creative industries by helping to protect them against the global proliferation of intellectual property theft. In addition to calling for ACTA governments to adopt strong enforcement regimes like that of the United States for combating trademark counterfeiting and copyright piracy, the ACTA includes innovative provisions to deepen international cooperation in protecting intellectual property rights and to promote sound enforcement practices.

The ACTA is the product of close collaboration between the Administration and Congress as well as intensive consultations with U.S. industry and nongovernmental organizations. Over the course of the negotiations, USTR staff held dozens of ACTA-related meetings and conference calls with Congressional staff, including staff of your office. We used those meetings and calls to apprise Congress of proposed U.S. negotiating positions, keep Members abreast of developments and solicit their views. We responded to advice that you and other Members provided, for example, by making the ACTA negotiations more transparent and by ensuring that certain provisions were not included in the Agreement. Your advice and that of other Members helped to improve the final product and ensure that the ACTA reflects Congressional perspectives.

As noted, USTR also pursued extensive public engagement in connection with the ACTA. USTR's efforts were recognized even by stakeholders who had earlier expressed concerns about the proposed agreement. For example, the Consumer Electronics Association commended USTR for taking into consideration the comments of many U.S. stakeholders, stating that the changes reflected in the final draft "eliminated most of the provisions of greatest concern to our industry." The Computer and Communications Industry Association expressed appreciation for USTR's efforts to respond to concerns of U.S. internet and technology firms, stating that "[a]s CCIA presently interprets ACTA, it does not conflict with U.S. domestic law."

U.S. negotiators were careful to ensure that the ACTA is fully consistent with U.S. law. For that reason, Congress will not need to enact legislation in order for the United States to implement the Agreement. Nor will Congress need to take any other action before the Agreement enters into force for the United States. In this respect, the ACTA is similar to a long line of trade-related agreements that this and earlier Administrations have concluded and that have entered into force without further Congressional action. The Clinton Administration, for example, entered into and implemented intellectual property rights agreements with Trinidad and Tobago, Jamaica, Ecuador, Hungary and Nicaragua, among others, with broad, substantive patent,

trademark, and copyright obligations applicable to the United States and the other parties. Like the ACTA, each of those agreements was drafted to reflect U.S. law and entered into force without further action by Congress. I would also draw your attention to the following additional examples – a few among many – of U.S. trade agreements that have been concluded and carried out without submission to the Congress for approval:

- A June 2011 agreement providing for Mexico to lift its retaliatory import duties on U.S. products (such as wine, Christmas trees, and paper products).
- A May 2011 agreement with Mexico on mutual recognition of testing procedures for telecommunications equipment.
- A May 2009 agreement with the European Union on trade in beef.
- A December 2001 multi-party agreement on winemaking practices.
- A March 1994 agreement with the European Union providing for mutual recognition of traditional names for distilled spirits.

You will find a comprehensive list of U.S. trade agreements concluded over recent decades in the appendix to the President's annual report to Congress on the trade agreements program. A large number of these agreements required no implementing legislation and were brought into force by the President without further action by Congress. We expect to implement the ACTA in the same manner, consistent with longstanding practice in the trade area.

I appreciate your interest in the ACTA and look forward to continuing work with you to help support and promote our innovative and creative industries.

Sincerely,



Ambassador Ron Kirk